

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 01-H-04221; 01-O-00976;
)	02-O-14755; 05-O-00563
GUADALUPE GAMINO,)	(05-O-02907) (Cons.)
)	
Member No. 74011,)	DECISION AND DISCIPLINE ORDER;
)	ORDER SEALING CERTAIN
A Member of the State Bar.)	DOCUMENTS
)	

On June 26, 2002, a Notice of Disciplinary Charges (NDC) was filed against respondent Guadalupe Gamino (respondent) in case no. 01-H-04221, and on June 27, 2002, a NDC was filed against respondent in case no. 01-O-00976. Both matters were assigned to the Honorable JoAnn M. Remke.

Respondent thereafter contacted the State Bar of California's Lawyer Assistance Program (LAP) to assist him with his substance abuse issue, and in March 2003, respondent entered into a Participation Agreement with the LAP.

The parties entered into a Stipulation Re Facts and Conclusions of Law on May 6, 2003 with respect to case nos. 01-H-04221; 01-O-00976 and 02-O-14755.¹ The stipulation was received by the court that same date.

¹ In the Stipulation Re Facts and Conclusions of Law, the parties set forth the nexus between respondent's substance abuse issue and his misconduct.

On June 17, 2003, Judge Remke issued an order consolidating case nos. 01-H-04221 and 01-O-00976.

On July 29, 2003, the court lodged its Decision Re Alternative Recommendations for Degree of Discipline in case no(s). 01-H-04221; 01-O-00976; 02-O-14755, the Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program (ADP)² (Contract),³ and the parties' Stipulation Re Facts and Conclusions of Law, and respondent was accepted into the ADP.

Respondent executed an amendment to his LAP Participation Agreement/Plan on October 22, 2003 and June 30, 2005.

On February 7, 2006, the parties executed an Addendum to Stipulation Re Facts and Conclusions of Law in case no(s). 05-O-00563 (05-O-02907) which was received by the court on February 8, 2006.

On April 12, 2006, the court lodged its Confidential Statement of Alternative Dispositions and Orders in case no(s). 01-H-04221; 01-O-00976; 02-O-14755; 05-O-00563 (05-O-02907), the Contract and Waiver for Participation in the State Bar Court's ADP (Contract)⁴ with respect to all five matters, and the parties' Addendum to Stipulation Re Facts and Conclusions of Law with respect to case no(s). 05-O-00563 (05-O-02907).

Effective November 1, 2006, case no(s). 01-H-04221; 01-O-00976; 02-O-14755; and 05-O-00563 (05-O-02907) were reassigned to the undersigned judge.

On January 9, 2008, respondent signed an amended Contract and Waiver for Participation in the State Bar Court's ADP (Contract) with respect to all five matters. Thereafter, on January 30, 2008, the court received the amended Contract and the Amended Confidential Statement of

² The ADP was formerly known as the State Bar Court's Pilot Program for Respondents with Substance Abuse or Mental Health Issues.

³ The Contract was executed by respondent on this date.

⁴ The Contract was executed by respondent on this date.

Alternative Dispositions and Orders executed by the court in January 2008 in case no(s). 01-H-04221; 01-O-00976; 02-O-14755; 05-O-00563 (05-O-02907).

The court lodged an order on March 20, 2008, amending the Contract executed by respondent on January 9, 2008, and received by the court on January 30, 2008.

On July 8, 2008, the court filed an order modifying respondent's restitution provision in his ADP Contract to reflect that moneys owed to Lynn Rubenzer are owed instead to Kenneth Sperandio.

The court filed an order on April 10, 2009, again amending the Contract executed by respondent on January 9, 2008, and received by the court on January 30, 2008.

On July 9, 2009, the court issued an order finding that respondent has successfully completed the ADP. Thereafter, on that same date, the court filed the parties' Addendum to Stipulation Re Facts and Conclusions of Law in case no(s). 05-O-00563 (05-O-02907).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In this consolidated matter, respondent stipulated that he violated: (1) rule 1-110 of the Rules of Professional Conduct⁵ by failing to comply with reproof conditions; (2) rule 3-110(A) in two matters by failing to competently perform the legal services for which he was employed; (3) Business and Professions Code section 6068, subdivision (o)(3)⁶ in two matters by willfully failing to self-report sanctions to the State Bar; and (4) section 6068, subdivision (m) by failing to respond to his client's reasonable requests for status reports.

In mitigation, respondent recognized the wrongfulness of his conduct and took steps to address the underlying substance abuse condition that contributed to his misconduct. In particular, respondent signed a LAP Participation Agreement memorializing his commitment to

⁵ Unless otherwise indicated, all further references to rule(s) refer to the Rules of Professional Conduct of the State Bar of California.

⁶ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

the program and has participated in the LAP. Respondent also displayed spontaneous cooperation and candor to the State Bar during disciplinary investigation and proceedings. The parties also stipulated in mitigation that respondent refunded advanced attorney fees to certain clients, albeit after State Bar intervention.

In aggravation, respondent has a prior record of discipline. Effective April 27, 2001, respondent received a private reproof in case no. 00-O-12709 for violating rules 3-110(A), 3-700(D)(1), 3-700(D)(2), and section 6068, subdivisions (m) and (i). However, as the misconduct in this prior matter coincided with the time that some of the misconduct occurred in this present proceeding, the aggravating effect of this prior discipline is diminished as it is not indicative of respondent's inability to conform to ethical norms. Thus, the court will consider the totality of the findings to ascertain what the discipline would have been had the matters been brought as one case. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.) In addition, respondent's multiple acts of misconduct in the current matter were considered an aggravating circumstance.

The parties' stipulation as to facts and conclusions of law lodged on July 29, 2003, and the Addendum to Stipulation Re Facts and Conclusions of Law lodged on April 12, 2006 and filed on July 9, 2009, as well as the court's orders approving the stipulation and the addendum, are attached hereto and hereby incorporated by reference, as if fully set forth herein. The stipulation and addendum set forth the factual findings, legal conclusions, and aggravating and mitigating circumstances in this consolidated matter.

Furthermore, at the time respondent engaged in his misconduct, he was suffering from a substance abuse issue, and respondent's substance abuse issue directly caused or contributed to the misconduct which forms the basis for this proceeding. Supreme Court case law establishes that an attorney's rehabilitation from alcoholism or other substance abuse problems can be

accorded significant weight if it is established that (1) the abuse was addictive in nature; (2) the abuse causally contributed to the misconduct; and (3) the attorney has undergone and meaningful and sustained period of rehabilitation. (*Harford v. State Bar* (1990) 52 Cal.3d 93, 101; *In re Billings* (1990) 50 Cal.3d 358, 367.)

Respondent entered into a Participation Agreement with the LAP in March 2003,⁷ and executed amendments to his Participation Agreement/Plan in October 2003 and June 2005. The LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program dated January 13, 2009, which reflects that respondent has complied with the requirements set forth in his LAP Participation Agreement/Plan for at least one year prior to the date of the certificate, and that LAP is not aware of the use of any unauthorized substances that during this time period.

Respondent also successfully completed the ADP. Respondent's successful completion of the ADP, which required his successful participation in the LAP, as well as the Certificate of One Year Participation in the Lawyer Assistance Program, qualify as clear and convincing evidence that respondent no longer suffers from the substance abuse issue which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a mitigating circumstance in this matter. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(iv).)

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, to preserve public confidence in the legal profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

⁷ Although respondent executed a LAP Participation Agreement on March 10, 2003, he initially contacted the LAP on or before November 7, 2002.

After considering the parties' joint recommendation as to the disposition of this matter, the Standards for Attorney Sanctions for Professional Misconduct (standard(s)), certain case law, the parties' stipulation setting forth the facts, conclusions of law, and the aggravating and mitigating circumstances with respect to case no(s). 01-H-04221; 01-O-00976; 02-O-14755, and the nexus between respondent's substance abuse issue and his misconduct, the court advised the parties of the disposition of this matter if respondent successfully completed the ADP and the discipline which would be recommended to the Supreme Court if respondent was terminated from, or failed to successfully complete, the ADP.

After agreeing to the disposition/discipline which the court would recommend to the Supreme Court if respondent successfully completed or was terminated from, or failed to successfully complete, the ADP, respondent executed the Contract to participate in the ADP; the Contract was lodged with the court; and respondent's period of participation in the ADP commenced. Thereafter, additional client complaints were filed with the State Bar against respondent necessitating the incorporation of the additional misconduct and a modification of the court's original disposition/discipline recommendation. Accordingly, respondent entered into an Addendum to Stipulation Re Facts and Conclusions of Law and a new ADP Contract. The court also issued a Confidential Statement of Alternative Dispositions and Orders setting forth the court's modified discipline recommendation.

In determining the appropriate discipline to recommend in this matter if respondent successfully completed the ADP, the court considered the parties' original recommended disposition, as well as certain standards and case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 1.7(a), 2.4(b), 2.6, 2.9 and 2.10 and *Conroy v. State Bar* (1990) 51 Cal.3d 799; *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813, *Wells v. State Bar*

(1984) 36 Cal.3d 199, and *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509.

Respondent successfully participated in the ADP and on July 9, 2009, the court found that respondent has successfully completed the ADP. Accordingly, the court will impose the discipline set forth in the court's Amended Confidential Statement of Alternative Dispositions and Orders⁸ if respondent successfully completed the ADP.

DISCIPLINE ORDER

Accordingly, it is ordered that respondent **GUADALUPE GAMINO, State Bar Number 74011**, is hereby publicly reprovved. Pursuant to the provisions of rule 270(a) of the Rules of Procedure of the State Bar of California (Rules of Procedure), the public reprovall will be effective when this decision becomes final. Furthermore, pursuant to rule 9.19(a) of the California Rules of Court and rule 271 of the Rules of Procedure, the court finds that the interest of respondent and the protection of the public will be served by the following specified conditions being attached to the public reprovall imposed in this matter. Failure to comply with any condition(s) attached to this public reprovall may constitute cause for a separate proceeding for willful breach of rule 1-110 of the Rules of Professional Conduct of the State Bar of California. Respondent is hereby ordered to comply with the following conditions attached to his public reprovall for at least one year following the effective date of the public reprovall or until respondent fully satisfies the restitution requirement set forth below, whichever is later:

1. Respondent must make restitution to: (1) the City and County of San Francisco in the amount of \$250; and (2) Kenneth Sperandio in the amount of \$8,638.50 plus 10% interest per year from September 1, 1999 (or reimburse the State Bar's Client Security Fund, to the extent of any payment from the fund to the City and County of San Francisco and/or Kenneth Sperandio, in accordance with Business and Professions Code

⁸ The Amended Confidential Statement of Alternative Disposition and Orders was received by the court on January 30, 2008.

section 6140.5) and furnish proof to the State Bar's Office of Probation in Los Angeles;⁹

Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d).

With each written quarterly report required herein, respondent must provide to the Office of Probation satisfactory proof of all restitution payments made by him during that quarter or applicable reporting period.

To the extent that respondent has paid any restitution prior to the effective date of the public reproof imposed in this matter, respondent will be given credit for such payment(s) provided satisfactory proof of such is or has been shown to the Office of Probation;

2. During the reproof period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
3. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (Office of Probation), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
4. Within thirty (30) days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;
5. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of reproof. Under penalty of perjury, respondent must state

⁹ The court's Amended Confidential Statement of Alternative Dispositions and Orders received stamped on January 30, 2008, stated that the reproof period would be only one year and did not include specified restitution if respondent successfully completed the ADP. However, at the time this Amended Confidential Statement of Alternative Dispositions and Orders was executed, it was assumed that respondent would have completed restitution prior to the court finding that respondent had successfully completed the ADP. Thus, in light of the fact that the court made a finding that respondent had successfully completed the ADP before the restitution set forth in the Contract had been completed, the court finds it necessary to require restitution as a reproof condition and for the period of reproof to last for at least one year or until respondent satisfies the restitution requirement, whichever is later.

whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of reprobation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than thirty (30) days, that report must be submitted on the next quarter date, and cover the extended period;

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of reprobation and no later than the last day of the reprobation period;

6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the reprobation conditions; and
7. Respondent must comply with all provisions and conditions of his Participation Agreement/Plan with the Lawyer Assistance Program (LAP).

COSTS

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS

The court directs a court case administrator to file the parties' Stipulation Re Facts and Conclusions of Law lodged on July 29, 2003 and this Decision and Discipline Order; Order Sealing Certain Documents. Thereafter, pursuant to rule 806(c) of the Rules of Procedure of the State Bar of California (Rules of Procedure), all other documents not previously filed in this matter are ordered sealed pursuant to rule 23 of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their duties. Protected material will be marked and maintained by all authorized

individuals in a manner calculated to prevent improper disclosure. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

IT IS SO ORDERED.

Dated: October _____, 2009

PAT McELROY
Judge of the State Bar Court